IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.266 OF 2003

The State of Maharashtra ...Applicant
Vs.
Kumar Gangaram Chavan ...Respondent

Shri. K. V. Saste, A.P.P. for the Applicant.
Shri. A. K. Singh for Respondent(absent).

CORAM : A.S.OKA, J.
DATED : JULY 29, 2005.

P.C.:

1. On 1st April, 2005 this Court issued notice for final disposal. Shri. A. K. Singh, the Advocate waived service for the Respondent. On 20th July, 2005 when this Revision Application was called out, the learned Advocate for the Respondent was absent. Therefore, though submissions of the learned A.P.P. were fully heard, the judgment was not dictated with a view to give one more opportunity to the Respondent to appear and contest the matter.

2. The challenge in this Criminal Revision Application is to the judgment and order dated 16th August, 2002 passed by the learned Ist Adhoc Additional Sessions Judge, Baramati. By the order impugned, the Respondent-accused was ordered to be discharged from the charges levelled against him for the offences punishable under section 363 and 366 of the Indian Penal Code.

3. The learned A.P.P. submitted that there was more than enough material on record for proceeding

against the accused. He submitted that though there was material available on record on the basis of which charge could have been framed, the learned Ist Adhoc Additional Sessions Judge has passed the order of discharge. The learned A.P.P. submitted that the order is perverse and therefore, interference is called for.

4. F.I.R. was registered on 18th May, 2000 for offence punishable under section 363 read with section 366 of the Indian Penal Code. The first informant is the mother of one Saraswati who was of the age of fifteen years at the relevant time. The complaint was that on 17th May, 2000 at 12.00 noon the Respondent kidnapped the daughter of the first informant from her lawful guardianship without her consent. The allegation is that the Respondent abducted said minor girl with an intention to marry with her. The prosecution cited as many as seventeen witnesses. According to the case of the prosecution, the date of birth of the daughter is 03rd June, 1985. The learned Adhoc Additional Sessions Judge observed that the Investigating Officer has not referred the "prosecutrix-Saraswati" to Medical Officer to ascertain her age. The learned Judge referred to statement of the minor daughter and observed that she on her own accord joined the company of the Respondent-accused. It will be necessary to refer to

the finding recorded by the learned Adhoc Additional Sessions Judge in paragraph No.9 which reads thus:

> 9) As regards evidence of the girl's age, the conclusive piece of evidence of the girl's age is birth certificate. In view of Section 35 of Indian Evidence Act, a birth certificate is an important piece of evidence to determine age of the girl. On going through the statement of Saraswati, it reveals that she of her own accord joined the company of the accused when accused called her from her house. Saraswati seems to be the girl of the age of understanding as she is a grown up girl of 15 yars as alleged by the prosecution. Therefore, considering the evidence on record as reflected from the police papers, it appears to me that the prosecution miserably fails to show that the girl is under the age of 18 years and she was induced or taken away by the accused from the lawful guardian of the complainant. Considering the statement of Saraswati, it appears to me that she left her home as called by the accused and at her own accord and joined the accused and in such circumstances it cannot be said that the accused has taken away or induced the girl Saraswati from the lawful guardianship of the complainant.

In paragraph No.10 the learned Judge observed that "Mere certificate issued by the Head Master of the school that the birth date is 03.06.1985 is not sufficient piece of evidence. It is for the Investigation Officer to produce on record the school leaving certificate or a copy from the admission register along with proof of documents produced at the time of admission i.e. affidavit of the parents or guardian as regards birth date produced at the time of admission."

5. In my view, there was no occassion for the learned Judge to record finding in paragraph No.9 that the prosecution has miserably failed to show that Saraswati was under the age of eighteen years and she was induced or taken away by the accused from the lawful guardianship of the complainant. The relevant issue was regarding the age of Saraswati. The prosecution has produced the certificate issued by the Head Master of the school that birth date of the said minor Saraswati was 3rd June, 1985. The Head Master was cited as a witness by the prosecution. The evidence of the first informant i.e. the mother of the child was yet to be recorded. Head Master was also to be examined. While considering the question of discharge, the Court was required to consider the material with view to find out if there was a ground for presuming that the accused has committed the offence. The Court was also required to consider the question whether case was not likely to lead to conviction. In my view, the approach of the learned Judge was totally erroneous. There was certainly a sufficient material on record for proceeding against the Respondent. However, the learned Judge has relied only upon statement of alleged minor Saraswati and has come to the conclusion that the Respondent is entitled to discharge. On plain reading of the impugned order, it is obvious that no case for discharge was made out.

The order is unsustainable and deserves to be quashed and set aside.

6. Accordingly, the impugned order dated 16th August, 2002 is quashed and set aside. The learned Judge is directed to proceed further in accordance with the law.

JUDGE